IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4489 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.N.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHROMA INTERNATIONAL

Versus

KRISHNA CHEMICALS

Appearance:

1. Special Civil Application No. 4489 of 2003

MR JT TRIVEDI for Petitioner

MR JANAKRAY K RAVAL for Respondents

CORAM : HON'BLE MR.JUSTICE D.N.PATEL

Date of decision: 09/09/2004

C.A.V. JUDGEMENT

1. The present petition has been preferred under Article 227 of the Constitution of India, by the petitioner, challenging the order passed by the Chamber

Judge, City Civil Court, Ahmedabad below the summons for judgment, Ex.13 in Summary Suit No.6164 of 2000 on 27.02.2003.

2. The present petitioner is the original plaintiff in Summary Suit No.6164 of 2000. The petitioner (original plaintiff) has been filed a suit for recovery of Rs.6,20,000/-- with running interest at the rate of 18% p.a.

3. It is contended by the learned advocate for the petitioner that the present petitioner (original plaintiff) as a sole Proprietorship Concern had placed an order for purchasing certain chemicals from the respondents (original defendants) and had also issued Demand Draft for an amount of Rs.5,35,000/-- on 04.08.1999 in favour of Krishna Chemicals and, thereafter, the respondents (original defendants) have neither delivered the goods nor refunded the amount and, therefore, the present petitioner had no option, but to file a suit bearing Summary Suit No.6164 of 2000 against the respondents (original defendants).

4. Learned advocate for the respondents has submitted that the amount paid by the petitioner which is at Rs.5,35,000/- is appropriated towards the dues paid by the sister concern of the petitioner (original plaintiff). The respondents (original defendants) had to recover the amount from sister concern of the present petitioner and, therefore, the amount paid by the petitioner was appropriated towards the said dues. Therefore, it cannot be said that the petitioner has made any payment towards the goods to be purchased from the respondents. The amount as alleged, has not been paid towards the dues, which is to be supplied by the respondents, but the said amount has been paid towards the dues of the sister concern of the petitioner. Keeping in mind the said defence rightly unconditional leave has been granted to defend the suit by the trial Court and hence, this Court may not interfere with the order passed by the trial Court.

5. It appears from the record of the case that the case of the respondents (original defendants), an amount of Rs.5,35,000/- has been appropriate towards the dues of the sister concern of the plaintiff namely M/s.Monarch Dyestuffs Industries and Exports Ltd. Therefore, the query was raised by this Court to the petitioner that who had purchased the demand draft and in whose favour the Demand Draft for Rs.5,35,000/-- was issued. In reply to the said query, the learned advocate for the respondents

presented his certificate issued by the State Bank of India dated 05.07.2004 to the fact that Demand Draft No.593724 for Rs.5,35,000/-- was purchased by the petitioner and was issued in favour of Krishna Chemicals (present respondent No.1 original defendant). Thus, the Demand Draft issued in the name of the respondent No.1 cannot be appropriated towards the dues of M/s.Monarch Dyestuffs Industries and Exports Ltd., which has been wound up by the order of the High Court, as stated in para-4 of rejoinder affidavit filed by the present petitioner in Summary Suit No.6164 of 2000. The said M/s.Monarch Dyestuffs Industries and Exports has nothing to do with the suit transaction. Therefore, the said appropriation of the amount is not true and is incorrect and illegal on the part of the respondents and, therefore, once the amount of Rs.5,35,000/-- has already been paid by the present petitioner (original plaintiff) and especially when the said amount was accepted by the respondent No.1 in the month of August, 1999, the respondents must supplied the goods or returned the money with interest, but neither of the things has been done and, therefore, the summary suit was preferred by the present petitioner. The certificate issued by the Bank is taken on record. The letter dated 05.08.1999 written by the respondent No.1 to the petitioner (original plaintiff) has been posted after two and half months. This fact is clear from the documents annexed at Page Nos.51 and 52 of the memo of the petition. The said documents make abundantly clear that prima facie the letter is after thought.

6. In view of the aforesaid facts and circumstances of the case and the order passed by the trial Court is prima facie erroneous, bad in law and de-horse the facts and deserves to be quashed and set aside. The defence raised by the respondents (original defendants) is false, sham and moonshine.

7. In view of the abovementioned facts and circumstances of the case, this petition is allowed accordingly. The order passed by the trial court is hereby quashed and set aside. Rule is made absolute. No order as to costs. In view of this, respondents are hereby directed to deposit an amount of Rs.5,35,000/-- [Rupees Five Lakhs Thirty Five Thousand Only] within a period of six weeks from today, before City Civil Court at Ahmedabad.

[D. N. Patel,J.]

(vijay)